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EXAMINER

SAINT CYR, LEONARD

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte LEONARD CERVERA NAVAS

Appeal 2017-003738
Application 12/733,234
Technology Center 2600

Before ST. JOHN COURTENAY III, LARRY J. HUME, and
JOYCE CRAIG, *Administrative Patent Judges*.

Opinion for the Board by COURTENAY, Administrative Patent Judge.

Opinion concurring by COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

This is an appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 34–49. Claims 1–33 are canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The Invention

Appellant's claimed invention relates to a "method and system for adapting the reproduction speed of a sound track to a user's text reading speed." (Title).

Representative Claim

34. Method for adapting the reproduction of a sound track to the text reading speed of a user comprising the following steps:

(a) recording of the moment in which a user reaches at least one reference point in the said text,

(b) calculating and recording the text reading speed with regard to the aforementioned moment in which a user reaches the said reference point in the text and the length of text between reference points,

(c) adjusting the reproduction speed of the sound track depending on the calculated reading speed by lengthening or shortening the pauses between sound tracks or lengthening or shortening the reproduction of the sound tracks.

(Lettered limitations are contested.)

Rejections

R1. Claims 34 and 35 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.

R2. Claims 34 and 35 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of Walker (US Patent 2002/0091713 A1, publ. July 11, 2002) and Gleissner et al. (US 2004/0152054 A1, publ. Aug. 5, 2004) (hereinafter "Gleissner").

R3. Claims 36–49 are rejected under pre-AIA 35 U.S.C. § 103(a) as being obvious over the combined teachings and suggestions of Walker, Gleissner, and Park (US 2004/0025111 A1, publ. Feb. 5, 2004).

Grouping of Claims

Based upon Appellant’s arguments, we decide the appeal of claims 34 and 35, rejected under § 103 rejection R2, on the basis of representative claim 34. We decide the appeal of claims 36–49, rejected under § 103 rejection R3, on the basis of representative claim 36. To the extent Appellant has not advanced separate, substantive arguments for particular rejected claims or issues, such arguments are waived. *See* 37 C.F.R. § 41.37(c)(1)(iv).

ANALYSIS

We have considered all of Appellant’s arguments and any evidence presented. Although we conclude the Examiner erred regarding rejection R1 under § 101, we find Appellant’s arguments regarding obviousness rejections R2 and R3 are unpersuasive, for the reasons discussed *infra*. Regarding rejections R2 and R3, we adopt as our own: (1) the findings and legal conclusions set forth by the Examiner in the Final Office Action from which this appeal is taken (Final Act. 5–10), and (2) the findings, legal conclusions, and explanations set forth in the Answer in response to Appellant’s arguments (Ans. 10–13). We highlight and address specific findings and arguments for emphasis in our analysis below.

Rejection R1 of claims 34 and 35 under § 101

Issue: Did the Examiner err in concluding that claims 34 and 35 are directed to non-statutory subject matter under 35 U.S.C. § 101?

Appellant contends “there is significantly more added to the abstract idea” where the invention creates

a new sensorial experience, never tried so far, consisting of combining the reading of printed words with the reproduction of sounds and music (but never words as in an audiobook) in a similar way to the use of sound tracks in motion pictures

The central theme of the invention is the measuring of reading speed of a user by marking the time taken to reach various reference points in a text. The invention then modifies the playback of a sound track to match the reading speed of an individual reader. The sound track is not only music, it is music and sound effects (but never words).

(App. Br. 7).

The Examiner concludes the claims at issue are “are built around the behavior of mathematically defined as adapting the reproduction speed of a soundtrack base[d] on the text reading speed of a user. This is a judicial exception (abstract idea).” (Ans. 10).

We note abstract ideas have been identified by the courts by way of example, as including fundamental economic practices, certain methods of organizing human activities, an idea of itself, and mathematical relationships and/or formulas. *See Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355–56 (2014). Under the two-part test described by the Supreme Court in *Alice*, “[w]e must first determine whether the claims at issue are directed to a patent-ineligible concept,” such as an abstract idea. *Alice*, 134 S. Ct. at 2355.

We conclude claim 1 performs a process of **synchronizing a sound track** to a text reading speed that goes beyond merely “organizing [existing] information into a new form” or carrying out a fundamental economic practice. *Digitech Image Techs., LLC v. Elecs. for Imaging, Inc.*, 758 F.3d

1344, 1351 (Fed. Cir. 2014); *see also Alice*, 134 S.Ct. at 2356; *McRO, Inc. v. Bandai Namco Games America Inc.*, 837 F.3d 1299, 1316 (2016) (holding that a claim directed to **automating lip synchronization** using rules **is not directed to an abstract idea** and recites subject matter as a patentable process under § 101.).

Applying this reasoning here, we conclude **adjusting the reproduction speed of the sound track** depending on the calculated reading speed, or shortening the pauses between sound tracks, or lengthening or shortening the reproduction of the sound tracks (i.e., **synchronizing**), is not a categorically abstract idea.

We further agree with Appellant’s argument:

[T]he computation as taught herein carried out by a computer calculates the reading speed of an individual reader and anticipates when the reader reaches the next point for the next segment of the sound track. This ability to actively learn and modulate constantly the outcome is one of the features of the present disclosure that cannot be classified in any way as being capable of being performed by a routine generic computer.

(App. Br. 7). We thus find the recited “adjusting” step (c) of claim 34 provides significantly more than the abstract idea itself, and thus satisfies the second prong of the *Alice* test.¹

We therefore reverse the Examiner’s rejection R1 of claims 34 and 35 under 35 U.S.C. § 101.

¹ Regarding prong two of the test articulated by the Supreme Court in *Alice*, we further “consider the elements of—each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application.” *Alice*, 134 S. Ct. at 2355 (quoting *Mayo*, 132 S. Ct. at 1298, 1297)).

Rejection R2 of claims 34 and 35 under § 103(a)

Issue: Under § 103, did the Examiner err by finding the cited combination of Walker and Gleissner would have taught or suggested contested limitations (a), (b), and (c), within the meaning of claim 34?²

Regarding claim 34, Appellant contends:

[T]he Applicant's invention adds sounds (i.e. sound track) to books in order to enhance the reading experience i.e. provides an additional element to the book reading experience by adding extra material to improve the media. Neither Walker nor Gleissner make use of the addition of sound tracks.

(App. Br. 11).

Appellant further urges:

The voiceover in Gleissner is not a sound track but a verbal explanation of text or video or a vocalization of the text of the transcript to aid content comprehension. In the applicant's invention, there is never a voiceover which would conflict with the reading of the printed words.

(*Id.*).

We find Gleissner's augmented content, including music, "audio books," etc., teaches or *at least suggests* the contested "sound track" as recited in claim 34. (Ans. 10, Gleissner, Abst., ¶ 55). Although Walker's text presentation assists the reader in reading, we find Walker's *sound files*, comprising actual sounds of words to further assist the reader, teach or *at*

² We give the contested claim limitations the broadest reasonable interpretation consistent with the Specification. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997).

least suggest a “soundtrack, within the meaning of claim 34.”³ (Walker ¶ 91).

Appellant further contends:

Cervera Navas [(the named inventor)] adjusts [the] timing of sound track reproduction through [a] unique algorithm fully described in the Specification and Claims[,] whereas Gleissner provides no such detail.

Cervera Navas initially introduces a main switch on the sound reproduction player which is specifically for the reader to manually operate an electronic marker to record the reader reaching a reference point in the text and then to calculate the reader's reading speed to arrive at that point and determine overall reading speed (Claims 34, 40, 41, 42 and 43). Cervera Navas also introduces the equivalent for electronic texts where the computer records text reference points for calculation of reading speed (Claims 44, 45, 46 and 47). Neither of these introduced features are in Gleissner and are novel to Cervera Navas and are non-obvious over the prior art cited herein.

(App. Br. 12, emphasis omitted).

We are not persuaded by Appellant’s arguments because Appellant is arguing limitations not recited in claim 34.⁴ Claim 34 is silent regarding a

³ “[T]he question under 35 U.S.C. § 103 is not merely what the references expressly teach but what they would have suggested to one of ordinary skill in the art at the time the invention was made.” *Merck & Co., Inc. v. Biocraft Laboratories, Inc.*, 874 F. 2d 804, 807–808 (Fed. Cir. 1989). (Emphasis added).

⁴ Regardless of the general contentions and imputed intended meanings articulated by Appellant in the Brief, “[i]t is the *claims* that measure the invention.” See *SRI Int’l v. Matsushita Elec. Corp. of Am.*, 775 F.2d 1107, 1121 (Fed. Cir. 1985) (*en banc*) (citations omitted); *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998) (citations omitted) (“[T]he name of the game is the claim.”).

“unique algorithm,” a “main switch,” or manually operating an electronic marker.

Appellant also argues:

Applicant's invention provides a detailed explanation of how the computer will calculate the reading speed of a reader whereas Gleissner does not contain any reference to calculation of reading speed or, indeed, how that would be implemented if it had been included in Gleissner.

(App. Br. 12).

We are not persuaded by Appellant’s argument because Appellant is arguing the references separately.⁵ The Examiner cites Walker, not Gleissner, for teaching the “calculating” step (b) of claim 34. (Final Act. 5). We find Walker’s measuring and tracking the reading rate teaches, or at least suggests, the contested step of “calculating . . . the text reading speed,” as recited in claim 34. (Walker ¶¶ 115, 393).

In the Answer (12), the Examiner further finds Gleissner’s tracking of the speed at which the user views or listens to a segment also teaches or suggests this limitation. (Ans. 12, citing Gleissner, ¶¶ 32, 69, 71, and Gleissner’s claim 26: “maintaining a correlation of words spoken to specific points in at least one of the audio and video digital content by reference to the index.”).

We agree with the Examiner’s finding that Walker’s speeding up and slowing down the presentation rate (Walker, ¶ 114, Fig. 10) combined with Gleissner’s playback speed adjustment and pausing actions (Gleissner ¶ 71,

⁵ One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

claim 26), teach, or at least suggest, “*adjusting of the reproduction speed of the sound track depending on the calculated reading speed*,” as recited in step (c) of independent claim 34. (Ans. 12–13).

We note Appellant has not filed a Reply Brief to rebut the Examiner’s responsive clarifications and findings in the Answer.

Accordingly, Appellant has not provided sufficient evidence or argument to persuade us of any reversible error in the Examiner’s reading of the contested limitations on the corresponding features found in cited prior art. Therefore, we sustain the Examiner’s obviousness rejection of independent representative claim 34, and dependent claim 35, which falls therewith. *See supra* Section, Grouping of Claims.

Rejection R3 of dependent claims 36–49 under § 103(a)

Issue: Under § 103, did the Examiner err by improperly combining the cited references?

Regarding system claims 36–49, Appellant submits arguments regarding the contested claim term “sound track” and the contested limitation of calculating “a reader’s reading speed” (claim 36), similar to those arguments previously advanced regarding method claim 34. (App. Br. 13–16). We are not persuaded by Appellant’s arguments for the same reasons discussed above.

Appellant further argues the prior art references relied upon in rejection R3 “are not in the same technical field of Applicant’s invention” and have “a different use.” (App. Br. 16).

We are not persuaded that Walker, Gleissner, and Park are non-analogous art. We note that different uses do not necessitate such a

conclusion. Our reviewing court guides: “[t]his court also observes that the inclusion of meat encasement art within the understanding of a person of ordinary skill in this art does not preclude the use of the knitting references as analogous to the claimed invention.” *Mintz v. Dietz & Watson*, 679 F.3d 1372, 1377 (Fed Cir. 2012).

Appellant does not persuade us that the uses of reading text in the ways taught in each of Walker, Gleissner, and Park are so different that a person of ordinary skill in the art would have considered these respective methods for improving human reading to be non-analogous. When Walker, Gleissner, and Park are each read for all that they teach, it is apparent that they are in the same or similar fields of endeavor and are thus analogous art. *In re Clay*, 966 F.2d 656, 658–59 (Fed. Cir. 1992) (“Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.”).

Applying this reasoning here, we find a preponderance of the evidence supports the Examiner’s finding that one of ordinary skill in the art would have reasonably been motivated to combine the teachings of Walker, Gleissner, and Park. (Final Act. 6, 8–9).

Accordingly, on this record, and based upon a preponderance of the evidence, we are not persuaded the Examiner erred in combining the cited references. We therefore sustain the Examiner’s rejection R3 of representative independent claim 36, and dependent claims 37–49, which fall with claim 36. *See supra* Section, Grouping of Claims.

DECISION

We reverse the Examiner's decision rejecting claims 34 and 35 under 35 U.S.C. § 101.

We affirm the Examiner's rejections R2 and R3 of claims 34–49 under 35 U.S.C. § 103(a).

Because we have affirmed at least one ground of rejection with respect to each claim on appeal, we affirm the Examiner's decision. *See* 37 C.F.R. § 41.50(a)(1).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

COURTENAY, Administrative Patent Judge, concurring:

I concur in this panel’s decision that claims 34 and 35 are directed to statutory subject matter under 35 U.S.C. § 101. Claims 34 and 35 are clearly not directed to a method of performing a financial or hedging transaction or a method of organizing human activity – these being examples of methods our reviewing courts have previously concluded were directed to abstract ideas. Nor can synchronization of a sound track with a person’s reading speed be reasonably performed as a mental step.

I agree that *McRO, Inc.*, 837 F.3d at 1316, provides guidance here regarding the similar **synchronization aspect** of claim 34. Therefore, I find it unnecessary to reach the second step of the *Alice* analysis, because I conclude claim 34, when considered as a whole, under a broad but reasonable interpretation consistent with the Specification, is not directed to an abstract idea.

I particularly note Appellant’s supporting description: “**This invention is particularly interesting for children and teenagers as their reading speed may vary significantly in months or in a few years’ time.**” (Spec. 5, ll. 26–28, emphasis added).

It is readily apparent from a review of Appellant’s claims and Specification that the invention on appeal could **assist young children in learning to read**, by making such **reading more interesting** with the addition of a **synchronized soundtrack** (e.g., by providing sound effects and/or music synchronized with each new page).

I decline to dismiss, as an abstract idea, an inventive method that could materially reduce illiteracy by advancing reading proficiency in children (and adults). Although I concur with the panel that Appellant’s

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present claims are too broad to avoid the Examiner's art rejections under § 103, I am of the view there is a significant, important invention described in Appellant's Specification.